IN THE HIGH COURT OF PUNJAB AND HARYANA AT

HANDIGARH.

C.W.P. No. 14091 of 2004

Date of Decision: 7.12.2006

Kundan Lal

....Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam and others

...Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. Brijender Kaushik, Advocate
for the petitioner.

Mr. Gurinderjit Singh, Advocate,

for the respondents.

JUDGMENT

M.M. KUMAR, J.

The prayer made by the petitioner in the instant petition is for quashing orders dated 6.8.2001 (P-2 and P-3) vide which an amount of Rs. 1,66,530/- from gratuity and Rs. 89,493.45 from commuted 40% of pension, totaling to Rs. 2,56,023.45, has been deducted. The said amount has been deducted on account of shortage of parts and transformers oil in distribution transformers returned by

the petitioner while in service. A further prayer has been made for directing the respondents to release the amount of Rs. 2,56,023.45 along with 24% penal interest.

The petitioner has superannuated on 28.2.2000 from the post of Junior Engineer. Before his retirement on 23.7.1998 he was served with a charge sheet as he was responsible for excessive rate of damaged transformers. He did not give any reply and subsequently two more notices were issued to him, finally a notice was given on 9.8.1999. Thereafter, a punishment of stoppage of four increments without cumulative effect was imposed upon him vide order dated 29.10.1999 (R-1).

After hearing learned counsel for the parties we are of the considered view that the matter is not res-integra as in a catena of judgments this court has dealt with the question `whether pensionary benefits could be withheld merely on the ground of issuance of a show cause notice before the date of retirement.' The view taken by a Division Bench of this Court in the case of Kirat Gopal v. Haryana Vidyut Parsaran Nigam Ltd. and others (C.W.P. No.13039 of 1999 decided on 20.3.2000) had gone in favour of the petitioner. In the afore-mentioned judgment, reliance has been placed on the judgment of Hon'ble the Supreme Court in P.R. Nayak v. Union of India, AIR 1972 SC 554, wherein it was laid down that the issuance of charge sheet for initiation of departmental inquiry is a sine qua non. Even otherwise under Rule 2.2 (b) of the Punjab Civil Services Rules, Volume-II, (as applicable to State of Haryana) the aforementioned legal position is absolutely clear. The explanation appended to Rule

2.2(b) in so far as is relevant to the present case reads as under:-

> "Explanation.- For the purpose of this rule-
>
> (1) departmental proceeding shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from an earlier date, on such date; and....."

In view of the above, on the basis of principle and precedents we are of the view that the impugned action of the respondents in withholding an amount of Rs. 1,66,530/- from gratuity and Rs. 89,493.45 from commuted 40% of pension, totaling to Rs. 2,56,023.45, is held to be illegal. Accordingly, a direction is issued to the respondent to release all the retiral benefits of the petitioner. The petitioner shall also be entitled to interest at the rate of 9% per annum from the date of his retirement till the date payment is made. The petitioner is also held entitled to payment of interest on all other delayed payments of retiral benefits from the date it became due till the date of their payment at the rate of 9 % per annum.

Needful shall be done within a period of two months from the date a copy of the order is received by the respondents.

The petition stands disposed of in the above terms.

(M.M. KUMAR)

JUDGE

(M.M.S. BEDI)
JUDGE

December 7, 2006

Pkapoor